

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RLI INSURANCE COMPANY,

Plaintiff,

Case No. 1:14-cv-00802

vs.

Judge Timothy Black
Magistrate Judge Stephanie K. Bowman

FIFTH THIRD BANCORP,

Defendant.

FIFTH THIRD BANCORP et. al.,

Plaintiffs,

vs.

Case No. 1:14-cv-869

CERTAIN UNDERWRITERS AT LLOYD'S
SUBSCRIBING TO POLICY NUMBERS
B0509QA04810, B0509QA051310, 81906760,
et al.,

Judge Timothy Black
Magistrate Judge Stephanie K. Bowman

Defendants

**FIFTH THIRD'S MOTION, IN THE ALTERNATIVE, TO STRIKE THE
EXPERT REPORT OF NANCY TERRILL**

Fifth Third Bancorp and Fifth Third Bank (collectively "Fifth Third") move this Honorable Court, in the alternative, to strike the expert report of Ms. Nancy Terrill served by RLI Insurance Company ("RLI") in the event that the Court grants RLI's Motion to Strike Fifth Third Bancorp's Expert Disclosure (Doc. 101). In support thereof, Fifth Third states as follows:

1. On October 31, 2016, RLI and the Upper Excess Carriers submitted the expert report of Ms. Nancy Terrill.

2. To rebut the opinions set forth in Ms. Terrill's report, Fifth Third submitted the expert report of Mr. Kelley, which specifically rebutted Ms. Terrill's report on an opinion-by-opinion basis, on the deadline for rebuttal reports from all parties – January 31, 2017. *See generally* Fifth Third's Mem. In Opp'n To RLI's Mot. to Strike.

3. RLI filed a Motion to Strike Mr. Kelley's rebuttal report on March 10, 2017 on the grounds that it was untimely and that it constitutes an improper expert opinion. For the reasons set forth in Fifth Third's Memorandum in Opposition to RLI's Motion to Strike, which is filed herewith and incorporated herein by reference, RLI's Motion to Strike should be denied.

4. Should the Court disagree and strike Mr. Kelley's report as improper expert opinion, the report of Ms. Terrill should similarly be stricken.

5. In support of this Motion, Fifth Third relies upon "Fifth Third's Memorandum of Law in Opposition to RLI's Motion to Strike Fifth Third Bancorp's Expert Disclosures."

For the foregoing reasons, and for the reasons more fully set forth in Fifth Third's Memorandum of Law in Opposition to RLI's Motion to Strike, which is filed herewith and incorporated herein by reference, Fifth Third respectfully requests that, in the event this Court strikes Mr. Kelley's rebuttal report as improper expert testimony, the Court strike the expert opinion of Ms. Terrill.

RESPECTFULLY SUBMITTED,

/S/ Mark J. Byrne

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CERTIFICATE OF SERVICE

I hereby certify and affirm that a true and correct copy of the attached **FIFTH THIRD'S MOTION, IN THE ALTERNATIVE, TO STRIKE THE EXPERT REPORT OF NANCY TERRILL** was served via ECF upon counsel of record this 20th day of March, 2017.

/s/ Mark J. Byrne